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# APPENDIX

## Supreme Court of the United States

OCTOBER TERM, 1967

## No. 482

UNITED STATES OF AMERICA, APPELLANT

*v.*

HORACE JOHNSON, ET AL.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

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FILED JUNE 13, 1967
PROBABLE JURISDICTION NOTED OCTOBER 23, 1967

# Supreme Court of the United States

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[fol. 1]

## RELEVANT DOCKET ENTRIES

| Date | |
|---|---|
| February 16, 1967 | Criminal Indictment in (1) count, filed. |
| | * * * * |
| March 2, 1967 | ARRAIGNMENT<br>RE ALL DEFTS: Plea of not guilty entered and filed. |
| | * * * * |
| March 14, 1967 | RE ALL DEFTS: Motion to dismiss indictment, filed. Brief filed. |
| 24, 1967 | Govt's response to motion to dismiss, filed. |
| 28, 1967 | SUBMITTED TO JUDGE SMITH ON DEFTS' MOTION TO DISMISS. |
| | * * * * |
| May 16, 1967 | Re ALL DEFTS: Order Dismissing the Indictment, filed. Copies mailed to Counsel. |
| | * * * * |
| June 13, 1967 | Government's notice of appeal to the supreme court of the United States, filed. (Copies to Counsel and USSSC) |

[fol. 2]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

* * * *

INDICTMENT—Returned February 16, 1967

THE GRAND JURY CHARGES:

COUNT ONE

That, on or about January 8, 1967, HORACE JOHNSON, JAMES RAYMOND HOGAN, WILLIE EVERETT HESTER, JR., and McCAGGER BAGWELL did, in Jackson County, Georgia, within the Northern District of Georgia, conspire together, with each other, and with other persons to the Grand Jury unknown, to injure, oppress, threaten, and intimidate Lester Hester, James Garland Sheats, and John Lewis Smith, Negro citizens of the United States, as well as other Negro citizens of the United States, in the free exercise and enjoyment by said Negro citizens of the right and privilege, secured to them by the laws of the United States, to the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accomodations of a restaurant, the 53 Truck Stop, Braselton, Jackson County, Georgia, a place of public accomodation as defined in Section 2000a, Title 42, United States Code, without discrimination or segregation on the ground of race, color, religion, or national origin;

[fol. 3] It was a part of the plan and purpose of the conspiracy that the conspirators would strike and beat Lester Hester, James Garland Sheats, and John Lewis Smith to discourage them and other Negro citizens from seeking service at the 53 Truck Stop on the same basis as white citizens.

All in violation of Section 241, Title 18 of the United States Code.

A TRUE BILL /s/ Royce Donald Fair
Foreman

/s/
CHARLES L. GOODSON
United States Attorney

[fol. 4] PLEA

I, *Horace Johnson*, Defendant, having received a copy of the within indictment and having waived arraignment, plead *Not Guilty* thereto.

In Open Court this *2d* day of *March, 1967*.

/s/ Horace Johnson
Defendant

/s/ Robert B. Thompson
Attorney for Defendant

PLEA

I, *James Raymond Hogan*, Defendant, having received a copy of the within indictment and having waived arraignment, plead *Not Guilty* thereto.

In Open Court this *2d* day of *March, 1967*.

/s/ James Raymond Hogan
Defendant

/s/ Robert B. Thompson
Attorney for Defendant

PLEA

I, *Willie Everett Hester, Jr.*, Defendant, having received a copy of the within indictment and having waived arraignment, plead *Not Guilty* thereto.

In Open Court this *2d* day of *March, 1967*.

/s/ Willie Everett Hester, Jr.
Defendant

/s/ Robert B. Thompson
Attorney for Defendant

[fol. 5] PLEA

I, *McCagger Bagwell*, Defendant, having received a copy of the within indictment and having waived arraignment, plead *Not Guilty* thereto.

In Open Court this *2d* day of *March, 1967*.

/s/ McCagger Bagwell
Defendant

/s/ Edward T. M. Garland
Attorney for Defendant

[fol. 6]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

* * * *

MOTION TO DISMISS INDICTMENT—Filed March 14, 1967

Come now the above named defendants, by and through their counsel, and file this their motion to dismiss the captioned indictment and for cause therefor respectfully show:

1.

The indictment fails to charge an offense against these defendants which is a violation of the laws, statutes or the Constitution of the United States.

2.

The exclusive remedy of the United States for the vindication or enforcement of rights accorded persons, including Negro citizens, under the public accommodations section of the Civil Rights Act of 1964, Public Law 88-352, Title II, (42 U.S.C. 2000a, et seq., are remedies provided therein, and do not include prosecution under 18 U.S.C. 241; consequently, the indictment fails to charge an offense against these defendants, (42 U.S.C. 2000a-6).

[fol. 7] 3.

The undersigned counsel, Robert B. Thompson, is representing the defendant, Willie Everett Hester, Jr., for purposes of this motion only, it appearing that said counsel made a limited appearance for Hester at the arraignment, and is authorized by said defendant to pursue this motion.

/s/

ROBERT B. THOMPSON
Attorney for Horace Johnson, James Raymond Hogan and Willie Everett Hester, Jr.

P.O. Box 679
Gainesville, Georgia
Tel: 534-7341

/s/

EDWARD T. M. GARLAND
Attorney for McCagger Bagwell

229 Candler Building
Atlanta, Georgia

[Certificate of Service Omitted]

[fol. 8]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

* * * *

OPINION BELOW—May 15, 1967

In this case the defendants were indicted for conspiracy to violate the civil rights of certain named Negro citizens under 18 U.S.C.A. § 241.[1] The particular right and privilege allegedly violated was "the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of a restaurant, the 53 Truck Stop, Braselton, Jackson County, Georgia, a place of public accommodation as defined in Section 2000a, Title 42, United States Code, without discrimination or segregation on the ground of race, color, religion, or national origin." No other right is involved than those imposed by the public accommodations section of the Civil Rights Act of 1964.

Defendants have filed a motion to dismiss on the grounds that (1) the indictment fails to state an offense and, correspondingly, (2) that the exclusive remedy prescribed by the Civil Rights Act under 42 U.S.C.A. 2000a-6 (b) prohibits the prosecution.

[fol. 9] As the violation of no other "civil right" than the public accommodations provisions of 42 U.S.C.A. § 2000 is alleged, the question is squarely presented as to whether the limitations of 42 U.S.C.A. § 2000a-6(b) foreclose the prosecutions under the general terms of 18 U.S.C.A. § 241. In a multi-violation indictment, determination of the issue was avoided in *United States* v. *Guest, et al*, 383 U. S. 745, 16 L. Ed. 239, even though the Dis-

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[1] "If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—They shall be fined not more than $5,000 or imprisoned not more than ten years, or both."

trict Court had inferred that such prosecutions were prohibited. *United States* v. *Guest*, 246 F. Supp. 475, 484.

The limitations of the Civil Rights Act of 1964 provides:

> "The remedies provided in this subchapter shall be the exclusive means of enforcing the rights based on this subchapter, but nothing in this subchapter shall preclude any individual or any State or local agency from asserting any right based on any other Federal or State law not inconsistent with this subchapter, including any statute or ordinance requiring nondiscrimination in public establishments or accommodations, or from pursuing any remedy, civil or criminal, which may be available for the vindication or enforcement of such rights." (42 U.S.C.A. 2000a-6 (b); § 207(b) of original Act.

While the conduct described by counsel is certainly of the type that ought to call for criminal penalties, it is concluded that the present law does not so provide and the motion to dismiss is good. Absent a contrary showing of congressional intent, the clear language of the above section is controlling.

The government argues that the prohibition applies only to the owners, operators, and employee-agents of such establishments as constitute a place of public accom- [fol. 10] modation under the act and a "direct" deprivation of the right at the lunch counter, registration desk, etc. Such reasoning, however, would permit the unjust result of insulating a shopkeeper from prosecution while subjecting his "co-conspirators" or "aiders and abetters" to criminal penalties. Thus, a wily owner could instigate a violation of this right, engage a group of hoodlums to carry it out, and yet be an exception to any penalty for his own wrongdoing.

There is no question that 18 U.S.C.A. § 241 has been given a broad liberal construction in its almost 100 years of application. And, clearly, it protects all Federal rights, whether flowing from the Constitution or created by Act of Congress. *United States* v. *Mosley*, 238 U. S. 383, 387 (1945); *United States* v. *Price*, 383 U. S. 787 (1966).

However, here, we are concerned with the granting of a new federal right with a concurrent restriction as to prosecution. In the absence of § 207(b); or in the presence of a state statute or other federal statute establishing such right, there would be no hesitancy in holding that a prosecution in the proper forum could proceed. Thus, the public accommodation rights granted by Congress in the Act, are such as are covered by 18 U.S.C.A. § 241, unless the Congress clearly intended that such rights be excluded. As stated, the language of § 207(b) itself does so exclude whether the action is "direct" or "indirect".

A close examination of the legislative history of the bill, conducted with the assistance of counsel here, strengthens this conclusion. Thus, the prior quoted remarks of then Senator Humphrey:

[fol. 11] "The clause which reads that 'the remedies provided in this title shall be the exclusive means of enforcing the rights hereby created' is designed to make clear that a violation of sections 201 and 202 cannot result in criminal prosecution of the violator or in a judgment of money damages against him. This language is necessary because otherwise it could be contended that a violation of these provisions would result in criminal liability under 18 U.S.C. 241 or 242, or in civil liability for damages under 42 U.S.C. 1983 or 1985. Thus, the first clause in section [207(b)] simply expresses the intention of Congress that the rights created by title II may be enforced only as provided in title II. . . . It does not limit enforcement of rights granted or created by other valid laws, whether State or Federal, even if they cover the same facility." (110 Congressional Record, page 9767, May 1, 1964)

and Senator Young:

"The prohibitions of title II would be enforced only by civil suits for an injunction. Neither criminal penalties nor the recovery of money damages would be involved." (110 Congressional Record, page 7384, April 9, 1964)

and Senator Magnuson:

> "Moreover, in every case, a judicial determination of coverage must be made prior to the entry of any order requiring the owner to stop discrimination. Thus, no one would become subject to any contempt sanctions—the only sanctions provided for in the act, until after it has been judicially determined that his establishment is subject to the act and he has been ordered by the Court to end this discrimination, and he has violated that Court order." (110 Congressional Record, page 7405, April 9, 1964)

Moreover, an express amendment to substitute direct criminal proceedings for the injunctive and contempt sanctions was soundly defeated. See Congressional Record, page 13647, June 12th, 1964. Nothing is found to indi- [fol. 12] cate an intent contrary to that expressed in the act itself. It is concluded that under Title II of the Civil Rights Act, "remedies are limited to civil actions for preventive relief". *Atlanta Motel* v. *United States*, 379 U.S. 241 at 248. Accordingly, this criminal prosecution is barred and the motion to dismiss is, therefore, granted.

IT IS SO ORDERED.

This the 15th day of May, 1967.

/s/

SIDNEY O. SMITH, JR.
United States District Judge

[fol. 13]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

* * * *

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed June 13, 1967

I.

Notice is hereby given that the United States of America, the Plaintiff above named, hereby appeals to the Supreme Court of the United States from the final order dismissing the indictment under 18 U.S.C., 241 entered in this action on May 15, 1967.

This appeal is taken pursuant to 18 U.S.C., 3731.

II.

The Clerk will please prepare a transcript of the record of this cause for transmission to the Clerk of the Supreme Court of the United States and include in said transcript the entire record in this case.

III.

The following question is presented by this appeal: Whether the District Court erred in holding that the indictment failed to state an offense because 42 U.S.C., 2000(a)-6(b) barred this prosecution brought under 18 U.S.C., 241.

This 13 day of June, 1967.

CHARLES L. GOODSON
United States Attorney

ROBERT L. SMITH
Assistant United States Attorney

[fol. 14]

SUPREME COURT OF THE UNITED STATES

No. 482, October Term, 1967

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UNITED STATES, APPELLANT.

*v.*

HORACE JOHNSON, ET AL.

APPEAL from the United States District Court for the Northern District of Georgia.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is placed on the summary calendar.

October 23, 1967

Mr. Justice Marshall took no part in the consideration or decision of this case.

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482

No. ——

# In the Supreme Court of the United States

OCTOBER TERM, 1967

UNITED STATES OF AMERICA, APPELLANT

*v.*

HORACE JOHNSON, ET AL.

*APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA*

## JURISDICTIONAL STATEMENT

THURGOOD MARSHALL,
*Solicitor General,*
JOHN DOAR,
*Assistant Attorney General,*
DAVID L. NORMAN,
GRADY J. NORRIS,
*Attorneys,*
*Department of Justice,*
*Washington, D.C. 20530.*

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272-801—67——1

# In the Supreme Court of the United States

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---

*APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA*

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## JURISDICTIONAL STATEMENT

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### OPINION BELOW

The opinion of the United States District Court for the Northern District of Georgia (Appendix A, *infra*, pp. 15–19) is not yet reported.

### JURISDICTION

The judgment of the district court dismissing the indictment against appellees was entered on May 15, 1967. A notice of appeal to this Court was filed on June 13, 1967. The jurisdiction of this Court to review the decision of the district court on direct appeal is conferred by 18 U.S.C. 3731. Cf. *United States* v. *Guest*, 383 U.S. 745.

## STATUTORY PROVISIONS INVOLVED

Section 241 of the Criminal Code (18 U.S.C. 241) provides:

> If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or
>
> If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—
>
> They shall be fined not more than $5,000 or imprisoned not more than ten years, or both.

Section 201(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000a(a)) provides:

> All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin.

Section 207(b) of the Civil Rights Act of 1964 (42 U.S.C. 2000a–6(b)):

> The remedies provided in this title shall be the exclusive means of enforcing the rights based on this title, but nothing in this title shall preclude any individual or any State or local agency from asserting any right based on any other Federal or State law not inconsistent

> with this title, including any statute or ordinance requiring nondiscrimination in public establishments or accommodations, or from pursuing any remedy, civil or criminal, which may be available for the vindication or enforcement of such right.

Other pertinent provisions of Title II of the Civil Rights Act of 1964 (42 U.S.C. 2000a *et seq.*) are reproduced in Appendix B, *infra,* pp. 21–22.

## QUESTION PRESENTED

Whether 18 U.S.C. 241 reaches at least some conspiracies to interfere with the exercise of rights secured by Title II of the Civil Rights Act of 1964, relating to equal treatment in places of public accommodation without regard to race.

## STATEMENT

On February 16, 1967, the United States Grand Jury for the Northern District of Georgia, Atlanta Division, returned an indictment charging four individuals with engaging in a criminal conspiracy in violation of 18 U.S.C. 241. The object of the conspiracy was alleged to be:

> * * * to injure, oppress, threaten, and intimidate Lester Hester, James Garland Sheats, and John Lewis Smith, Negro citizens of the United States, as well as other Negro citizens of the United States, in the free exercise and enjoyment by said Negro citizens of the right and privilege, secured to them by the laws of the United States, to the full and equal enjoyment of the goods, services, facilities, privileges, ad-

U.S. 787, 800–801. Even under a restrictive view of its scope, therefore, Section 241 would seem to reach a private conspiracy directed against the right to nondiscriminatory treatment in places of public accommodation. The question, then, is whether Congress deliberately foreclosed the sanction that Section 241 would otherwise afford by providing in Title II that the rights there created be enforced only by equitable proceedings.[2]

This contention is based on a narrowly literal reading of the language Section 207(b) (42 U.S.C. 2000a–6(b)), which declares, in part: "The remedies provided in this title [*i.e.*, injunctive relief] shall be the exclusive means of enforcing the rights based on this title * * * ." It is beyond doubt that Section 207(b) bars both damage suits and criminal prosecutions in some situations. As Senator Humphrey noted in the congressional debates, a restaurant owner denying service in the erroneous belief that his place of business is not covered by Title II was not meant to be subjected to criminal prosecution under 18 U.S.C. 241

[2] This issue was presented to this Court in *United States* v. *Guest*, 383 U.S. 745, 749–752, but it was not reached in that case because the district court's judgment dismissing the public accommodations count of the indictment there was "based, at least alternatively, upon its determination that this paragraph was defective as a matter of pleading." 383 U.S. at 751. This Court held that review of this part of the indictment was precluded by settled construction of the Criminal Appeals Act, 18 U.S.C. 3731, relying on *United States* v. *Borden Co.*, 308 U.S. 188 (383 U.S. at 751–752). In the present case, however, the district court's dismissal of the indictment was based entirely on a construction of the statute under which the indictment was brought, against the background of the exclusive-remedy provision of Title II.

or 242. 110 Cong. Rec. 9767. It may also be assumed that, because of Section 207(b), a group of restaurant operators or their agents could not be prosecuted under Section 241 for a nonviolent conspiracy to deny service to Negroes. Cf. *United States* v. *Mosley*, 238 U.S. 383.

However, the exclusive-remedy provision in the public accommodations law hardly compels the conclusion that those who engage in a conspiracy accompanied by violence designed to terrorize Negroes so that they will not even attempt to assert their right to service at places of public accommodation plainly covered by Title II are likewise immunized from the federal criminal laws. Such a result would be so startling that a congressional purpose to provide such protection to conspirators cannot be imputed. Although the legislative history of Title II's exclusive-remedy provision plainly indicates an intention to exempt proprietors of places of public accommodation—at least in the absence of violence—from criminal sanctions and civil damages,[3] no such intent appears with respect to the acts of racially motivated terrorists. The reasons for exempting the proprietor and his agents from such sanctions are wholly inapplicable to acts of violent, third-party conspirators.

Congress recognized that voluntary desegregation by white businessmen was not generally to be anticipated, at least initially, in light of the combined

[3] See, *e.g.*, the legislative history cited by the court below (App. A, *infra*, pp. 18–19).

pressures of competition and community sentiment.[4] Trying to foster general acceptance of, and to ensure widespread voluntary compliance with, the new law, Congress sought to apply only as much leverage as it felt was needed to overcome these obstacles. Aware that many proprietors felt compelled, for economic reasons, to operate segregated facilities, Congress determined to withdraw certain criminal sanctions where they might appear to be too harsh and where they would not, in any event, be instrumental in accomplishing the basic congressional purpose—desegregation of places of public accommodations. An injunction against the proprietor will usually be more effective than a criminal prosecution, because a criminal conviction will not necessarily assure Negroes nondiscriminatory service in the future. Injunctive relief, supported by the threat of contempt sanctions for violations, is more likely to achieve that result.

On the other hand, there is no reason to accord terrorists, unconnected with any establishment, the benefit of Title II's quite explicable exemption. Unlike the owner of a particular restaurant or theater who merely fails to accord nondiscriminatory service, they are engaged in threats, intimidation and reprisal—dangerous and violent conduct.[5] They act

[4] See Hearings Before the Senate Committee on Commerce on S. 1732, 88th Cong., 1st Sess., Pt. 1, at 206 (testimony of Assistant Attorney General Marshall); *id.* at 324 (statement of Hon. Frank H. Morris); *id.*, Pt. 2, at 690 (testimony of Undersecretary of Commerce Roosevelt); 110 Cong. Rec. 9765–9767 (remarks of Senator Humphrey).

[5] It is true that Sections 203 and 204 of the Civil Rights Act of 1964 (42 U.S.C. 2000a–2, 2000a–3) provide for injunctive re-

from malice rather than in response to community pressure or because of fear of economic loss. Their actions cannot be said to stem from honest doubts about the coverage of Title II, or from practical difficulties in complying with its requirements.

The text of the statute does not foreclose such a line of distinction. Indeed, Section 207(b) merely states that the remedies provided in Title II shall be the exclusive means of "enforcing" rights based on the title. It is reasonable to construe the word "enforcing" to encompass only those remedies that would compel a proprietor to *render service* to all on an equal basis—without attributing to Congress an intention to displace other statutory means of deterring or punishing persons who forcibly interfere with those seeking

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lief against those who "intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person with the purpose of interfering with any right or privilege secured by section 201 or 202, or * * * punish or attempt to punish any person for exercising or attempting to exercise any right or privilege secured by section 201 or 202." And Section 206 of Title II (42 U.S.C. 2000a–5) establishes the right of the Attorney General to bring a civil action for injunctive relief whenever he has cause to believe that persons are engaged in a "pattern or practice of resistance to the full enjoyment of any of the rights secured" by Title II. But these provisions do not provide for the vindication of the community's interest in the redress of criminal wrongs. Furthermore, the Attorney General's power to litigate is limited to instances where a "pattern or practice" of resistance exists. The government, under Title II read alone, would be powerless to protect its citizens from isolated acts of violence not constituting a pattern or practice, even where, as here, such violent acts are directed against persons seeking to exercise federally-protected rights. It can fairly be said, then, that as to isolated acts of violence, Title II offers the government no remedy at all.

to obtain (or render) such service, like the criminal sanctions of Section 241.[6]

Courts have long recognized such a distinction. This Court has defined the difference in these terms:

> The test whether a law is penal, in the strict and primary sense, is whether the wrong sought to be redressed is a wrong to the public, or a wrong to the individual, according to the familiar classification of Blackstone: "Wrongs are divisible into two sorts of species: *private wrongs* and *public wrongs*. The former are an infringement or privation of the private or civil rights belonging to individuals, considered as individuals; and are thereupon frequently termed *civil injuries:* the latter are a breach and violation of public rights and duties, which affect the whole community, considered as a community; and are distinguished by the harsher appellation of *crimes* and *misdemeanors.*" [Mr. Justice Gray, citing 3 Bl. Comm. 2 in *Huntington* v. *Attrill,* 146 U.S. 657, 668–669.]

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[6] Section 204 of Title II (42 U.S.C. 2000a–3) provides that a civil action may be brought seeking "preventive relief" whenever any person has engaged in any act or practice prohibited by Section 203. Section 203 contains Title II's prohibitions on intimidation and coercion. But Section 204(d) also contains a proviso permitting the court to "refer the matter to the Community Relations Service * * * for as long as the court believes there is a reasonable possibility of obtaining voluntary compliance * * *," up to 120 days. If Congress had intended Section 204 to be a substitute for criminal sanctions against violent conspiracies by persons unconnected with a place of public accommodation, it is doubtful that its enforcement statute would have been written in terms of "obtaining voluntary compliance."

Title II sets out equitable "remedies" under which an aggrieved person may secure his right to equal service at places of public accommodation. Those remedies are, as Section 207(b) makes clear, the exclusive means by which the aggrieved person may redress the "private wrong" committed against him. But penal statutes, such as 18 U.S.C. 241, impose punishment, in the name of the sovereign, for "public wrongs" which, in Blackstone's words, "are a breach and violation of public rights and duties" (3 Bl. Comm. 2). The purpose of prosecution under Section 241 is not to enforce the right of the aggrieved party to equal access to a place of public accommodation, but rather to protect and vindicate the rights of the whole community. Section 241 is not directed so much toward providing a *remedy* for the aggrieved, as toward prescribing *punishment* for the alleged wrongdoers.

Section 207(b) and its legislative history indicate that Congress intended to limit the *kinds* of conduct which would be considered offenses against the Nation. Refusals of service, without more, were not to be so considered. But the exclusive-remedy provision of Section 207(b) does not require the narrow construction given Section 241 by the district court, particularly in light of the broad protection which Section 241 has traditionally been regarded as affording. In discussing the reach and scope of Section 241 in *United States* v. *Price,* 383 U.S. 787, 800–801, this Court indicated its agreement with the words of Mr.

Justice Holmes in *United States* v. *Mosley*, 238 U.S. 383, 387–388, when he said:

> The source of this section in the doings of the Ku Klux and the like is obvious and acts of violence obviously were in the mind of Congress. Naturally Congress put forth all its powers. * * * [T]his section dealt with Federal rights and with all Federal rights, and protected them in the lump * * *. [It should not be construed so] as to deprive citizens of the United States of the general protection which on its face § 19 [now Section 241] most reasonably affords.'

The Civil Rights Act of 1964 created a new federal right to nondiscriminatory treatment in places of public accommodation and provided for its direct enforcement by injunction. Congress, to be sure, declined to make it a crime to peaceably deny that right. Title II's provisions, however, should not be construed as wholly suspending the general law punishing violent conspiracies directed against the assertion of federal rights. Section 207(b)'s exclusive-remedy provision, properly considered, was simply not intended to accomplish such a result.

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[1] Mr. Justice Fortas, speaking for the Court in *Price*, added to the words of Justice Holmes (383 U.S. at 801):

> We think that history leaves no doubt that, if we are to give Section 241 the scope that its origins dictate, we must accord it a sweep as broad as its language.

## CONCLUSION

For the foregoing reasons, we respectfully submit that probable jurisdiction should be noted and the case set down for plenary consideration.

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*Solicitor General.*

JOHN DOAR,
*Assistant Attorney General.*

DAVID L. NORMAN,
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AUGUST 1967.

# APPENDIX A

## IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA

Indictment No. A-25019

THE UNITED STATES, PLAINTIFF

*v.*

HORACE JOHNSON, JAMES RAYMOND HOGAN, WILLIE EVERETT HESTER, JR., MCCAGGER BAGWELL, DEFENDANTS

In this case the defendants were indicted for conspiracy to violate the civil rights of certain named Negro citizens under 18 U.S.C.A. § 241.[1] The particular right and privilege allegedly violated was "the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of a restaurant, the 53 Truck Stop, Braselton, Jackson County, Georgia, a place of public accommodation as defined in Section 2000a, Title 42, United States Code,

[1] "If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—They shall be fined not more than $5,000, or imprisoned not more than ten years, or both."

without discrimination or segregation on the ground of race, color, religion, or national origin." No other right is involved than those imposed by the public accommodations section of the Civil Rights Act of 1964.

Defendants have filed a motion to dismiss on the grounds that (1) the indictment fails to state an offense and, correspondingly, (2) that the exclusive remedy prescribed by the Civil Rights Act under 42 U.S.C.A. 2000a–6(b) prohibits the prosecution.

As the violation of no other "civil right" than the public accommodations provisions of 42 U.S.C.A. § 2000 is alleged, the question is squarely presented as to whether the limitations of 42 U.S.C.A. § 2000a–6(b) foreclose the prosecutions under the general terms of 18 U.S.C.A. § 241. In a multi-violation indictment, determination of the issue was avoided in *United States* v. *Guest, et al.*, 383 U.S. 745, 16 L. Ed. 239, even though the District Court had inferred that such prosecutions were prohibited. *United States* v. *Guest*, 246 F. Supp. 475, 484.

The limitations of the Civil Rights Act of 1964 provides:

> "The remedies provided in this subchapter shall be the exclusive means of enforcing the rights based on this subchapter, but nothing in this subchapter shall preclude any individual or any State or local agency from asserting any right based on any other Federal or State law not inconsistent with this subchapter, including any statute or ordinance requiring nondiscrimination in public establishments or accommodations, or from pursuing any remedy, civil or criminal, which may be available for the vindication or enforcement of such right." (42 U.S.C.A. 2000a–6(b); § 207(b) of original Act.

While the conduct described by counsel is certainly of the type that ought to call for criminal penalties, it is concluded that the present law does not so provide and the motion to dismiss is good. Absent a contrary showing of congressional intent, the clear language of the above section is controlling.

The government argues that the prohibition applies only to the owners, operators, and employee-agents of such establishments as constitute a place of public accommodation under the act and a "direct" deprivation of the right at the lunch counter, registration desk, etc. Such reasoning, however, would permit the unjust result of insulating a shopkeeper from prosecution while subjecting his "co-conspirators" or "aiders and abetters" to criminal penalties. Thus, a wily owner could instigate a violation of this right, engage a group of hoodlums to carry it out, and yet be an exception to any penalty for his own wrongdoing.

There is no question that 18 U.S.C.A. § 241 has been given a broad liberal construction in its almost 100 years of application. And, clearly, it protects all Federal rights, whether flowing from the Constitution or created by Act of Congress. *United States* v. *Mosley,* 238 U.S. 383, 387 (1945); *United States* v. *Price,* 383 U.S. 787 (1966). However, here, we are concerned with the granting of a new federal right with a concurrent restriction as to prosecution. In the absence of § 207(b); or in the presence of a state statute or other federal statute establishing such right, there would be no hesitancy in holding that a prosecution in the proper forum could proceed. Thus, the public accommodation rights granted by Congress in the Act, are such as are covered by 18 U.S.C.A. § 241, unless the Congress clearly intended that such rights be excluded. As stated, the language of § 207(b) itself

does so exclude whether the action is "direct" or "indirect".

A close examination of the legislative history of the bill, conducted with the assistance of counsel here, strengthens this conclusion. Thus, the prior quoted remarks of then Senator Humphrey:

> "The clause which reads that 'the remedies provided in this title shall be the exclusive means of enforcing the rights hereby created' is designed to make clear that a violation of sections 201 and 202 cannot result in criminal prosecution of the violator or in a judgment of money damages against him. This language is necessary because otherwise it could be contended that a violation of these provisions would result in criminal liability under 18 U.S.C. 241 or 242, or in civil liability for damages under 42 U.S.C. 1983 or 1985. Thus, the first clause in section [207(b)] simply expresses the intention of Congress that the rights created by title II may be enforced only as provided in title II. * * * It does not limit enforcement of rights granted or created by other valid laws, whether State or Federal, even if they cover the same facility." (110 Congressional Record, page 9767, May 1, 1964)

and Senator Young:

> "The prohibitions of title II would be enforced only by civil suits for an injunction. Neither criminal penalties nor the recovery of money damages would be involved." (110 Congressional Record, page 7384, April 9, 1964)

and Senator Magnuson:

> "Moreover, in every case, a judicial determination of coverage must be made prior to the entry of any order requiring the owner to stop discrimination. Thus, no one would become subject to any contempt sanctions—the only sanctions provided for in the act, until after it has

> been judicially determined that his establishment is subject to the act and he has been ordered by the Court to end this discrimination, and he has violated that Court order." (110 Congressional Record, page 7405, April 9, 1964)

Moreover, an express amendment to substitute direct criminal proceedings for the injunctive and contempt sanctions was soundly defeated. See Congressional Record, page 13647, June 12th, 1964. Nothing is found to indicate an intent contrary to that expressed in the act itself. It is concluded that under Title II of the Civil Rights Act, "remedies are limited to civil actions for preventive relief". *Atlanta Motel v. United States,* 379 U.S. 241 at 248. Accordingly, this criminal prosecution is barred and the motion to dismiss is, therefore, granted.

IT IS SO ORDERED.

This the 15th day of May, 1967.

SIDNEY O. SMITH, JR.,
*United States District Judge.*

# APPENDIX B

## Statutory Provisions Involved

(All citations are to Title II of the 1964 Civil Rights Act, 42 U.S.C. 2000a *et seq.*)

Section 201 (42 U.S.C. 2000a):

(a) All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin.

(b) Each of the following establishments which serves the public is a place of public accommodation within the meaning of this title if its operations affect commerce, or if discrimination or segregation by it is supported by State action:

* * * * *

(2) any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment; or any gasoline station;

* * * * *

Section 203 (42 U.S.C. 2000a–2):

No person shall (a) withhold, deny, or attempt to withhold or deny, or deprive or attempt to deprive, any persons of any right or privilege secured by section 201 or 202, or (b) intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person with the purpose of interfering with any

right or privilege secured by section 201 or 202, or (c) punish or attempt to punish any person for exercising or attempting to exercise any right or privilege secured by section 201 or 202.

Section 204 (42 U.S.C. 2000a–3).

(a) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by section 203, a civil action for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order, may be instituted by the person aggrieved and, upon timely application, the court may, in its discretion, permit the Attorney General to intervene in such civil action if he certifies that the case is of general public importance. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the civil action without the payment of fees, costs, or security.

* * * * *

(d) In the case of an alleged act or practice prohibited by this title which occurs in a State, or political subdivision of a State, which has no State or local law prohibiting such act or practice, a civil action may be brought under subsection (a): *Provided,* That the court may refer the matter to the Community Relations Service established by title X of this Act for as long as the court believes there is a reasonable possibility of obtaining voluntary compliance, but for not more than sixty days: *Provided further,* That upon expiration of such sixty-day period, the court may extend such period for an additional period, not to exceed a cumulative total of one hundred and twenty days, if it believes there then exists a reasonable possibility of securing voluntary compliance.

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No. 482

# In the Supreme Court of the United States

OCTOBER TERM, 1967

UNITED STATES OF AMERICA, APPELLANT

*v.*

HORACE JOHNSON, ET AL.

*ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA*

## BRIEF FOR THE UNITED STATES

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## BRIEF FOR THE UNITED STATES

### OPINION BELOW

The opinion of the district court (App. 6–9) is unreported.

### JURISDICTION

The judgment of the district court dismissing the indictment against the appellees was entered on May 15, 1967 (App. 9). A notice of appeal to this Court was filed on June 13, 1967, pursuant to 18 U.S.C. 3731 (App. 10). Probable jurisdiction was noted on October 23, 1967 (App. 11).

### STATUTORY PROVISIONS INVOLVED

Section 241 of the Criminal Code (18 U.S.C. 241) provides:

> If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in

the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be fined not more than $5,000 or imprisoned not more than ten years, or both.

Section 201(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000a(a)) provides:

All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin.

Section 207(b) of the Civil Rights Act of 1964 (42 U.S.C. 2000a–6(b)) provides:

The remedies provided in this title shall be the exclusive means of enforcing the rights based on this title, but nothing in this title shall preclude any individual or any State or local agency from asserting any right based on any other Federal or State law not inconsistent with this title, including any statute or ordinance requiring nondiscrimination in public establishments or accommodations, or from pursuing any remedy, civil or criminal, which may be available for the vindication or enforcement of such right.

## QUESTION PRESENTED

Whether conspiracies to assault Negroes for exercising the federal right to equality in public accommodations are subject only to civil injunction and not to criminal prosecution under 18 U.S.C. 241.

## STATEMENT

The indictment (App. 2), brought under 18 U.S.C. 241, alleges in substance that the appellees conspired to injure and intimidate three Negro citizens engaged in the exercise of their right to patronize a place of public accommodation (a restaurant), and that a part of the plan and purpose of the conspiracy was to beat the victims in order to dissuade them and other Negro citizens from seeking service at the establishment in question.

Since the indictment was dismissed before trial, the facts have not been developed in any detail. However, as indicated in the opinion of the district court (App. 7), government counsel, in opposing the motion to dismiss, described the acts and events which the government would be prepared to prove. We set forth this offer of proof not to suggest that the facts are yet established but only to illustrate the character of the controversy and the implications of the ruling that a trial of the case is precluded.

On the evening of January 7, 1967, three Negroes, Lester Hester, James Sheats, and John Lewis Smith, were driving through Jackson County, Georgia, on their way to Monroe, Georgia, after having attended a basketball game in Gainesville. At about 12:30 a.m. on January 8, 1967, they pulled into the parking lot

in front of a restaurant named the "53 Truck Stop", about one mile south of Interstate 85. Two of the travelers, Hester and Sheats, entered the restaurant, while Smith remained sleeping in the automobile.

Inside, at the counter, the two Negroes ordered something to eat. This apparently disturbed several white patrons, and either a waitress or the manager of the restaurant asked the Negroes to wait for their order in the kitchen. They did so, and after the order was prepared they left through a rear door and returned to their car.

As the Negroes exited through the rear door, some fifteen to twenty white males came out the front door and proceeded to the automobile. One of the three Negroes was knocked to the ground and slashed with a knife, suffering a wound on the hand (which required nine stitches) and a cut in the abdomen. Another victim was pushed and jostled a few times before he ran away. The windows of the car were smashed and the third victim, who had been asleep in the car, eluded the assailants after one of them came after him with a knife.[1]

On February 16, 1967, the United States Grand Jury for the Northern District of Georgia, Atlanta Division, returned an indictment charging four individuals with engaging in a criminal conspiracy in violation of 18 U.S.C. 241. The object of the conspiracy was alleged to be (App. 2):

> * * * to injure, oppress, threaten, and intimidate Lester Hester, James Garland Sheats, and

[1] Meanwhile, the manager of the restaurant telephoned the sheriff, but the sheriff did not respond to the call.

> John Lewis Smith, Negro citizens of the United States, as well as other Negro citizens of the United States, in the free exercise and enjoyment by said Negro citizens of the right and privilege, secured to them by the laws of the United States, to the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accomodations [*sic*] of a restaurant, the 53 Truck Stop, Braselton, Jackson County, Georgia, a place of public accomodation [*sic*] as defined in Section 2000a, Title 42, United States Code, without discrimination or segregation on the ground of race, color, religion or national origin;
>
> It was a part of the plan and purpose of the conspiracy that the conspirators would strike and beat Lester Hester, James Garland Sheats, and John Lewis Smith to discourage them and other Negro citizens from seeking service at the 53 Truck Stop on the same basis as white citizens.

Thus, the basis for this prosecution is that the defendants, persons unconnected with the truck stop, severely beat Negro travelers because the Negroes had entered the truck stop, a place of public accommodation, and sought and obtained the service to which they had a federal right.

Defendants entered pleas of not guilty and thereafter moved to dismiss the indictment on the ground, that under Section 207(b) of the Civil Rights Act of 1964 the provisions for injunctive relief set forth in Title II constitute the exclusive remedy for viola-

tions of the public accommodations law and preclude prosecution under 18 U.S.C. 241. The district court recognized that 18 U.S.C. 241 protects "all Federal rights, whether flowing from the Constitution or created by Act of Congress" (App. 7), and expressed no doubt that, but for the exclusive-remedy provision contained in Section 207(b), the prosecution could proceed. The court further observed that the conduct charged "is certainly of the type that ought to call for criminal penalties" (App. 7). Nevertheless, the district court concluded that Congress intended that deprivation of the right to equality in public accommodations could be remedied only by civil actions for injunctive relief, and that for this reason criminal prosecution under 18 U.S.C. 241 is barred. The court therefore granted the motion to dismiss the indictment for failure to charge an offense against the laws of the United States. This direct appeal followed.

## SUMMARY OF ARGUMENT

In enacting Title II of the Civil Rights Act of 1964, Congress secured the right of all persons to be free from racial discrimination at places of public accommodation, and prohibited withholding or impeding this right. After specifying a right to civil preventive relief against violations, Congress then proceeded to declare that, with certain qualifications, the remedies provided in Title II would constitute the exclusive means for enforcing rights based upon that Title. Properly understood, however, this limitation does not preclude criminal prosecution under 18 U.S.C. 241 for the kind of conduct alleged in the indictment

in this case—a conspiracy among persons not affiliated with a place of public accommodations, to molest and assault Negro travelers because of their exercise of the rights guaranteed to them by Title II.

As a general rule, the creation of a civil remedy to correct a violation of a federal right does not displace the power of the United States to assert the public interest in prosecuting criminal conspiracies. Only when Congress has clearly decreed that no criminal prosecution may be undertaken should description of a civil remedy as exclusive be construed as precluding the enforcement of the corresponding criminal law.[2] The legislative history of this statute does indicate that Congress intended to prohibit criminal prosecution of proprietors for certain forms of recalcitrance and non-compliance with Title II. However, nothing in the language of the Act, the congressional reports and debates, or the scheme of the legislation supports the view that Congress meant to immunize racially motivated assailants from the criminal consequences of conspiring to oppress Negroes for exercising their federal rights.

[2] *United States* v. *Stevenson*, 215 U.S. 190; *United States* v. *Hutto*, 256 U.S. 524.

## ARGUMENT

### CONGRESS DID NOT INTEND THAT THE EXCLUSIVE-REMEDY PROVISION IN SECTION 207(b) OF THE CIVIL RIGHTS ACT OF 1964 WOULD INSULATE A CONSPIRACY TO COMMIT ASSAULT FROM THE NORMAL CRIMINAL PENALTIES ATTACHED TO THE VIOLATION OF FEDERALLY PROTECTED RIGHTS

On July 2, 1964, the Congress passed, and the President signed, the Civil Rights Act of 1964. Title II defined the right of all persons to share in the equal enjoyment of public accommodations, free of discrimination or segregation because of their race, color, religion or national origin (Section 201(a), *supra*, p. 2).[3] This case turns upon the effect of Section 207 (*supra*, p. 2) which, after conferring jurisdiction on the United States district courts to entertain proceedings under Title II, provides in paragraph (b) that the "remedies provided in this title shall be the exclusive means of enforcing the rights based on

[3] Section 203 forbids withholding or denying the rights secured by Section 201, and prohibits intimidating or coercing any person with the purpose of interfering with his right to be free of racial segregation in the use of public accommodations (42 U.S.C. 2000a–2). Violation, or the threat of violation, of the proscription of Section 203 renders a person liable to a "civil action for preventive relief" instituted by the person aggrieved. If, however, the alleged violation would also be prohibited by State or local law, then these authorities must first be given thirty days notice to take action; if the alleged violation occurs in a State whose laws do not prohibit it, then the court may refer the matter to the Community Relations Service for up to 120 days if the court believes there is a reasonable possibility of voluntary compliance (42 U.S.C. 2000a–3, 4). A detailed discussion of the history and provisions of Title II of the Act is set out in this Court's opinion in *Heart of Atlanta Motel, Inc.* v. *United States*, 379 U.S. 241, 243–249.

this title * * *." The question before the Court is whether Congress intended by this provision to bar prosecution of racially motivated assailants for conspiring, in violation of 18 U.S.C. 241, to oppress Negroes in the exercise of their right to equality in public accommodations.[4] We submit that such a result would distort the purpose and understanding of Congress.

Although the language of Section 207(b) does not in terms bar federal criminal prosecutions, the legislative history does indicate, as we point out below, that when Congress spoke of making Title II remedies the "exclusive means of enforcing the rights based on this title" it did intend to rule out at least some prosecutions. The question that remains for judicial interpretation is how extensive Congress intended this preemption to be. As we shall urge, congressional solicitude to protect proprietors from punitive sanctions for acts of withholding service until there has been a concrete adjudication of the obligation to provide it does not justify a narrowing of the historic role of Section 241 so as to immunize outsiders engaged in violent retaliation against those who seek to exercise their declared federal rights.

### A. THE BROAD SCOPE OF 18 U.S.C. 241

Nearly a century ago, Congress enacted the Enforcement Act of 1870, containing the criminal prohi-

[4] This question was raised in *United States* v. *Guest*, 383 U.S. 745, where the government appealed directly from the dismissal of an indictment under 18 U.S.C. 241. There, the Court decided, however, that since—unlike the instant case—the dismissal had been rested on the alternative finding that the indictment was deficient as a matter of pleading, the dismissal was not properly reviewable by direct appeal. 383 U.S. at 749–752.

bition now codified in 18 U.S.C. 241. As this Court recently explained in *United States* v. *Price*, 383 U.S. 787, in this statute Congress exerted its utmost powers to secure federal rights from conspiratorial violations. The immediate occasion for outlawing even non-official conspiracies directed against federal rights was the activity of the Ku Klux Klan and the continued denial of rights to Negroes, "sometimes accompanied by violent assaults". *United States* v. *Price, supra*, 383 U.S. at 800, 802; *United States* v. *Mosley*, 238 U.S. 383, 387–88. Over the course of many years this Court has catalogued numerous federal rights that are protected under this section.[5] In implementing Section 241 the guiding principle has been that "history leaves no doubt that, if we are to give § 241 the scope that its origin dictate, we must accord it a sweep as broad as its language." *United States* v. *Price, supra*, 383 U.S. at 801. Thus, putting aside for the moment the impact of Section 207(b) of the Civil Rights Act, a violent conspiracy to injure Negro citi-

[5] This Court has made clear that Section 241 covers such rights as the right to travel freely in interstate traffic, *United States* v. *Guest*, 383 U.S. 745; the right to vote in federal elections, *Ex parte Yarbrough*, 110 U.S. 651; the right to perfect a homestead granted under a federal statute, *United States* v. *Waddell*, 112 U.S. 76; the right to be free of violence while in the custody of a federal marshal, *Logan* v. *United States*, 144 U.S. 263; the right to report violations of federal law to appropriate authorities, *Motes* v. *United States*, 178 U.S. 458, *In re Quarles and Butler*, 158 U.S. 532; and the right of federal officers to perform their duties, *United States* v. *Mason*, 213 U.S. 115. In addition, the section has frequently been held applicable to interference, by corruption or fraud, with the right to vote in federal elections. *United States* v. *Saylor*, 322 U.S. 385; *United States* v. *Classic*, 313 U.S. 299; *United States* v. *Mosley*, 238 U.S. 383. Recently, in *Price*, the section was also applied to protect Fourteenth Amendment rights.

zens for exercising their right to unsegregated public accommodations, as charged in the indictment, would clearly be punishable under 18 U.S.C. 241. This is a wholly relevant consideration in accommodating the primary purposes of the two statutes here at issue.

### B. THE PURPOSE OF TITLE II

Legislation assuring Negroes the right to equal access to public accommodations was the product of years of arduous investigation, drafting, and debate, which revealed a sharp awareness that a degradation of human values, as well as social and economic detriment, resulted from prevailing patterns of discrimination. It is in this light that we approach the question whether Congress, in 1964, specifically decided to alter the historic role of Section 241 and thus to immunize from criminal liability violent conspiracies designed to deprive Negro citizens of federal rights assured to them by the Act.

The heart of Title II is Section 201(a), guaranteeing to all persons the right to "full and equal enjoyment of the goods, services," etc., of any place of public accommodation without discrimination on account of race, color, religion or national origin. Section 203 prohibits violations of this right, and Section 204 affords a remedy by way of a "civil action for preventive relief" in order to effectuate the right. Section 207(b) goes on to state that the "remedies provided in this title shall be the exclusive means of enforcing the rights based on this title."[6] That language was con-

[6] The original draft of the Civil Rights bill spoke of enforcing rights "hereby created" by Title II. This section was amended on the floor of the Senate to refer to rights "based on this title," the language that became law. This was termed a "perfecting amendment" because: "One can get into a juris-

strued by the district court as barring resort to 18 U.S.C. 241 to punish violent conspiracies, even by outsiders who had nothing themselves to do with the ownership or operation of the place of public accommodation involved.

Immediately after the clause that characterizes the remedies defined in Title II "exclusive", however, the very same paragraph of Section 207(b) provides that other avenues for vindicating the interests that Title II was designed to protect are preserved. The paragraph explicitly declares that the exclusive-remedy clause does not preclude the assertion of "any right based on any other Federal or State law not inconsistent with this title" or prevent the pursuance of "any remedy, civil or criminal, which may be available for the vindication or enforcement of such right." Within the four corners of the so-called exclusive-remedy restriction itself, therefore, there is evidence that Section 207(b) was not conceived of as preempting every other mode of protecting the interests covered by Title II. It is in this perspective that we urge that a proper interpretation of this section, in light of all its terms and not merely the introductory clause, requires reinstatement of the indictment in this case.

More particularly, the exclusive-remedy clause itself speaks in terms of "enforcing the rights based on this title." The essential right sought to be enforced is to equality in public accommodations. Over the long

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prudential argument as to whether the title creates rights. Many believe that the title does not, but that the rights are created by the Constitution." 110 Cong. Rec. 13473 (remarks of Sen. Miller).

term, that right will ordinarily be enforceable only by direct action against proprietors—not against outsiders unconnected with the particular place of business. In other words, Section 207(b), properly construed, means only that the sole mechanism for obtaining the right to unsegregated service at a facility of public accommodation is by injunctive action. However, for violation of another federal statute, not inconsistent with Title II, which forbids violent conspiracies to discourage the assertion of federal rights, civil preventive relief is not the only recourse. This view is further supported by the final portion of Section 207(b), which qualifies the otherwise sweeping language of its opening clause. See, also, Section 1103, 42 U.S.C. 2000h–3. This construction, in our view, reconciles the language of the Act and the congressional plan with the evident realities of the situation.

This Court described the Civil Rights Act as "undertaking to prevent *through peaceful and voluntary settlement* discrimination in voting, as well as in places of accommodation and public facilities, federally secured programs and in employment." *Heart of Atlanta Motel, Inc.* v. *United States,* 379 U.S. 241, 246 (emphasis added). Title II provides only for "peaceful and voluntary" methods of securing compliance with the newly defined rights. This is apparent from the methodical and detailed steps that are to be followed before a suit for preventive relief can be pursued. If State or local officials are authorized to grant relief from the discriminatory act or practice, they must first be given thirty days' notice within which to take action. If there is no applicable State program, the district

judge, if he feels there is a reasonable possibility of obtaining "voluntary compliance," may refer the dispute to the federal Community Relations Service for up to four months of mediation. It is evident from these provisions that the focus of the remedies in Title II is on an attempt to work out long-range acquiescence *by the proprietors of facilities of public accommodations*—those on whose compliance the eventual and lasting success of the Act depends.

But such proceedings and negotiations have no relevancy with respect to outsiders, who have no connection with the ownership or operation of a place of public accommodation, and who seek by violence or intimidation to prevent the exercise of the right which the owner or operator is willing to recognize.

### C. THE LEGISLATIVE HISTORY

Analysis of the relevant legislative history confirms this view of the congressional purpose and shows that the exclusive-remedy language of Section 207(b) was not designed to immunize racial terrorists from criminal liability.

Congress was well aware that the objective of voluntary desegregation might be blunted by the pressures of competition and community sentiment.[7] Congress consciously undertook to devise methods of persuasion and enforcement which would overcome resistance rather than arouse it; its tactic was to apply only as

[7] See Hearings Before the Senate Committee on Commerce on S. 1732, 88th Cong., 1st Sess., pt. 1 at 206 (testimony of Assistant Attorney General Marshall); *id.* at 324 (statement of Hon. Frank H. Morris); *id.*, pt. 2 at 690 (testimony of Under Secretary of Commerce Roosevelt); 110 Cong. Rec. 9765–9767 (statement of Senator Humphrey).

much leverage as necessary to overcome the countervailing tendencies and forces. Congress perceived that a proprietor—perhaps beset by social and economic pressures and unsure of the new federal statute's applicability to his establishment—might deliberately deny service to a Negro in pursuit of his long-standing policy. Such an individual, Congress determined, should not be subjected, if he proved mistaken in his understanding of his legal obligations, to criminal penalties or monetary damages, at least under federal law. This policy was given explicit expression in the exclusive-remedy provision. Thus, Senator Humphrey, the floor manager of the bill, explained the impact of the limitation: "This would mean for example, that a proprietor who, in the first instance, legitimately—but erroneously—believes his establishment is not covered by section 201 or section 202 need not fear a jail sentence or a damage action if his judgment as to coverage of Title II is wrong." 110 Cong. Rec. 9767. Senator Young also sought to reassure opponents of the bill: "The prohibitions of Title II would be enforced only by civil suits for an injunction. Neither criminal penalties nor the recovery of money damages would be involved." 110 Cong. Rec. 7384. Senator Magnuson also made it clear that because of Section 207(b) the owner had no fear of a jail sentence unless he failed to comply with a court order.[8]

[8] Senator Magnuson stated: "Moreover, in every case, a judicial determination of coverage must be made prior to the entry of any order requiring the owner to stop discrimination. Thus, no one would become subject to any contempt sanctions—the only sanctions provided for in the act, until after it has been judicially determined that his establishment is subject to the act

The district court regarded the statements by these Senators as supporting dismissal of the indictment. Taken in context, however, these assurances merely reflect the judgment that proprietors who have not already had the opportunity to litigate the application of Title II to their facilities and have not been specifically directed to offer unsegregated service are not to be subjected in the first instance to criminal or pecuniary liability for deliberately refusing to furnish such service. But there is no indication whatever, either in the statements referred to or elsewhere in the legislative history, that Congress desired that those who conspire to beat and terrorize Negroes in order to deter them from exercising Title II rights should merely be enjoined from doing it again.[9] The relevant discussion was in terms of "a proprietor", or "the owner". It is clear that these were the persons who were to be shielded from civil and criminal liability, not outside conspirators.

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and he has been ordered by the Court to end this discrimination, and he has violated that Court order." 110 Cong. Rec. 7405.

[9] The district court conceived of an anomaly which we believe is unfounded. The court concluded that the government's position would permit "a wily owner * * * [to] instigate a violation of this right [to undiscriminated access to public accommodation], engage a group of hoodlums to carry it out, and yet be an exception to any penalty for his own wrongdoing" (App. 7). Since no proprietor is involved in this case, the issue of a proprietor's criminal liability for the type of conduct described by the district court is not presented here. In any event, Section 207(b) need not be construed as insulating a proprietor from prosecution if he engages with others in a violent conspiracy, rather than in a mere withholding of service.

It is true, to be sure, that the conduct described in the indictment—the deliberate use of violence upon Negroes who had done nothing other than to seek and secure food service—is forbidden by Section 203(b) and could thus form the basis for injunctive relief under Section 204. It is equally clear, however, that an injunction, if granted, would be effective only in the limited way of prohibiting similar assaults by the same conspirators. In cases such as the instant one—where the conspiracy is formed on the spot and results in an immediate assault upon the victims—an injunction is obviously a totally inappropriate method of protecting the exercise of rights. When there is a pattern or practice of violence or other forms of punishment and intimidation directed against the exercise of Title II rights, the injunctive remedy is a pertinent one.[10] But when the conduct is unofficial and sporadic, the existence of a federal criminal penalty is the only effective means by which the United States can protect its interest in the free exercise of federal rights by its citizens.[11]

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[10] In such cases—where there is such a pattern and practice—the Attorney General can also seek an injunction under Section 206(a). See, *e.g.*, *United States* v. *Sampson*, 256 F. Supp. 470, (N.D. Miss.) (three-judge court); *United States* v. *Original Knights of the Ku Klux Klan*, 10 Race Rel. L. Rep. 1449, 11 Race Rel. L. Rep. 53 (E.D. La. 1965) (three-judge court).

[11] The court below believed that its understanding of Congress's purpose was confirmed by the fact that an amendment to provide "direct criminal proceedings" was "soundly defeated" (App. 9). The amendment, defeated by the Senate by a two-to-one margin, was proposed by Senator Thurmond of South Carolina and would have *substituted* misdemeanor liability for the injunctive relief provisions of Title II. The "evil" that this amendment was expressily aimed at was that, in Senator Thur-

We revert to Senator Humphrey's statement (quoted in part above and relied on heavily by the district court) because it fairly typifies the legislative history.[12] Its true import is that the exclusive-remedy provision was inserted only to make it clear that the

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mond's view, the "practice of enforcement by injunction and the following punishment by contempt proceedings has become too widespread." 110 Cong. Rec. 13647. Rejection of this attack on what was elsewhere condemned as "government by injunction", H. Rep. 914, 88th Cong., 1st Sess. 46–50 (1963) (Additional views of Hon. George Meader), scarcely indicates that Congress disapproved of *all* criminal liability. The Thurmond amendment would have undermined what we have seen was a delicate congressional tailoring of an injunctive remedy designed to apply the minimum necessary pressure to a reluctant proprietor.

[12] The statement was introduced as follows (110 Cong. Rec. 9767): "I have asked the Justice Department to aid me in the discussion of Section 205(b) [207(b) in the final bill] and I ask unanimous consent to have the explanation printed in the Record."

"There being no objection, the statement was ordered to be printed in the Record as follows:

EXPLANATION OF SECTION 205(B) OF TITLE II

* * * * *

* * * The clause which reads that "the remedies provided in this title shall be the exclusive means of enforcing the rights hereby created" is designed to make clear that a violation of sections 201 and 202 cannot result in criminal prosecution of the violator or in a judgment of money damages against him. This language is necessary because otherwise it could be contended that a violation of these provisions would result in criminal liability under 18 U.S.C. 241 or 242, or in civil liability for damages under 42 U.S.C. 1983 or 1985. Thus, the first clause in section 205(b) simply expresses the intention of Congress that the rights created by Title II may be enforced only as provided in Title II. This would mean, for example, that a proprietor who, in the first instance, legitimately—but erroneously—believes his establishment is not covered by section 201 or 202 need

*substantive right* specified in Sections 201 and 202 to obtain service in places of public accommodation free from discrimination is to be enforced exclusively by injunction.[13]

We say that this is the true import because at no point in Title II or in its legislative history did Congress evidence an intent to exempt violent conspiracies from the criminal penalties otherwise attached to such conduct. Moreover, the whole legislative setting reinforces this interpretation of Section 207(b). One can hardly attribute to Congress a purpose to grant a new right to millions of Negro citizens and yet to legislate away the sanction in 18 U.S.C. 241 against violent conspiracies designed to deter the exercise of this very right. Thus, in the absence of the clearest evidence of congressional intention to the contrary, Section 241 should be regarded as continuing to encompass "*all* of the rights and privileges secured to citizens by *all* of the Constitution and *all* of the laws of the United States." *United States* v. *Price,* 383 U.S. 787, 800. Normally, provision of an exclusive civil remedy does not displace criminal statutes that would other-

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not fear a jail sentence or a damage action if his judgment as to the coverage of Title II is wrong. Of course, after a court orders him to comply he must comply and he may be punished for contempt if he fails to do so.

* * * * *

[13] In explaining Title II, the House committee observed that this title "would prohibit discrimination on grounds of race, color, religion, or national origin in specified places of public accommodation (sec. 201)" and then pointed out that the "prohibitions of title II would be enforced only by civil suits for an injunction (sec. 204(a))." H. Rep. No. 914, 88th Cong., 1st Sess. 20 (1963). The focus of the "prohibition" was, of course, the substantive ban on segregation in a covered facility.

wise be applicable (see note 2, *supra*, p. 7). Since the language of Title II does not of itself prohibit the prosecution of those responsible for conspiracies to commit violence, and since the manifest purpose behind Section 207(b) was only to preclude the criminal prosecution of proprietors who merely refuse to serve Negroes, the Court should not interpret the Civil Rights Act of 1964 as erecting a bar against the instant prosecution under Section 241.

## CONCLUSION

For the reasons stated, the judgment of the district court should be reversed and the indictment reinstated.

Respectfully submitted.

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# No. 482

IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

UNITED STATES OF AMERICA,
*Appellant,*

vs.

HORACE JOHNSON, ET AL.,
*Appellees.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA

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## BRIEF FOR THE APPELLEES

### OPENING STATEMENT

The recitations in the brief of the United States as to the opinion below, the jurisdiction of this Court, the statutory provisions involved, question presented and statement of the case are generally accepted, except, we think it is appropriate to include under the caption "Statutory Provisions Involved", Section 203 of the Civil Rights Act of 1964 (42 U.S.C. 2000a-2), which provides:

"No person shall (a) withhold, deny, or attempt to withhold or deny, or deprive or attempt to deprive, any person of any right or privilege secured by section 2000a or 2000a-1 of this title, or (b) intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person with the purpose of interfering with any right or privilege secured by section 2000a or 2000a-1 of this title, or (c) punish or attempt to punish any person for exercising or attempting to exercise any right or privilege secured by section 2000a or 2000a-1 of this title. Pub.L. 88-352, Title II, § 203, July 2, 1964, 78 Stat. 244."

## SUMMARY OF ARGUMENT

The plain, unambiguous language of Section 207(b) requires no interpretation or construction, merely application to the facts of the present case. A statute is open to construction, not as a matter of course, but only where the language used requires interpretation because of its ambiguity, conflicting connotations or obscure meaning. Section 207(b) plainly states that the remedies for enforcement of Title II rights shall be the civil remedies provided by Title II. The statute expresses the legislative intent that criminal prosecution shall be unavailable to the United States for violations of Title II prohibitions in such clear and explicit terms that there is no occasion to resort to the rules of statutory interpretation, leaving only the necessity to apply the plain and obvious meaning of the language used.

The intent of Congress, as expressed in Section 207(b), is manifest. In the first instance, the statute provides that the civil remedies shall be exclusive in so far as the United States is concerned. The statute then continues and provides that any other federal or state remedy may be avail-

able to individuals or to state and local governments, but not to the United States. Thus, the express language of the statute affirmatively and negatively provides that the United States may resort to no other remedy than civil, thereby precluding prosecution under 18 U.S.C. 241.

The legislative history is in accord with this interpretation. Not only does the legislative history evidence a clear intent that criminal prosecution not be utilized by the United States, there is no indication in the history that criminal prosecution under 18 U.S.C. 241 and 242, or otherwise, should be available to the United States. With reference to an earlier version of the Act, the Attorney General testified before a legislative committee to the effect that 18 U.S.C. 241 and 242 would be applicable to violations of Title II prohibitions. Thereafter, by amendment, Section 207(b) was added to the Act. An attempt to amend the Act by eliminating Section 207(b) for the purpose of substituting criminal sanctions was soundly defeated.

Even should the statute be subject to judicial construction, the only legal, logical and practical result which could be reached under the applicable rules would be that Congress intended enforcement of the Act only through the civil process provided by the Act. The language of the statute is transparent and its meaning is clear.

In the event the sanctions imposed by the Act are not sufficient to fully implement it for the purpose of assuring compliance, the Courts are without power to supply the deficit. In substance, the arguments urged by the United States addressed themselves to Congress and not to the Courts.

## ARGUMENT

### The Exclusive Remedy of the United States for the Vindication or Enforcement of Rights Accorded Persons, Including Negro Citizens, under the Public Accommodations Section of the Civil Rights Act of 1964, Public Law 88-352, Title II (42 U.S.C. 2000a, et seq.), Are Remedies Provided Therein, and Do Not Include Prosecution under 18 U.S.C. 241.

The long and tedious congressional history of Title II of the Civil Rights Act of 1964 and the well-organized opposition to its enactment, perhaps explains why the above statement is true. The clear language of the "exclusive remedy" provision, Section 207(b), leaves no doubt as to the intent of Congress. This provision is so lucid and unambiguous that it requires no construction or interpretation. A simple reading of the section discloses its manifest meaning.

Congress, after creating and defining the rights and privileges with respect to the use of public accommodations on a non-discriminatory basis, affirmatively prohibited the deprivation of such rights directly or indirectly. It went further and prohibited, substantially in the language of 18 U.S.C. 241, the act of or attempt to intimidate, threaten or coerce any person with the purpose of interfering with the exercise of such rights and privileges and from punishing any person for having exercised such rights and privileges. This is immediately followed by a remedy for the violation of such prohibitions. In this situation, Congress then specified in no uncertain terms that the remedy thus provided would be the exclusive remedy available to the United States. However, it left to the individuals, the states and local agencies any other remedies available under any *other* federal or state law not inconsistent with Title II.

As if to obviate the possibility of any misconstruction of its intent, Congress twice provided in Section 207(b) that the statutory remedies created by Title II would be the exclusive means available to the United States for enforcing the rights it had created in that Title and in vindicating violations of its prohibitions. First, it affirmatively stated that the provided remedies were exclusive. Second, it negatively stated the same principle in reserving to individuals and to state and local agencies, but not to the United States, any other consistent remedy available under federal or state law. If the remedy of prosecution under 18 U.S.C. 241 were intended to remain available to the United States, the limitation expressed by the statute, that is, "any individual or State of local agency", would not have been inserted. More than this, if the contention here urged is not valid, Section 207(b) has no meaning and must be treated as inert verbiage. This result cannot reasonably be attributed to Congress.

It is argued by the United States that the word "enforcing" is a word of limitation and that it aptly applies only to proprietors of public accommodation establishments, as opposed to outsiders. This argument is consistent with its contention that the exclusive remedies provision does not mean what it says, but *sub silentio*, contains an unwritten and unexpressed distinction between the two classes of individuals—proprietors and outsiders. Under this asserted argument, we wonder where the line of demarcation is drawn. If only proprietors are included in one group, we would assume that the employees, agents, waitresses, suppliers, building owners and other persons in similar positions would be deemed outsiders, subject to prosecution under 18 U.S.C. 241. It follows logically from that argument, that even a proprietor who, for any reason, including an intentional, bad-faith violation of the

statutory prohibitions, by himself or through his agents or outsiders, engages in prohibited conduct, is immune from prosecution, but those who associate with him in such conduct are not.

In footnote 9, page 16, of its brief, the United States says that this is not so, that Section 207(b) "need not" be construed to insulate a proprietor if he engages in a "violent conspiracy" to violate Title II of the Act. To adopt this argument would be to add yet additional language to the statute. In other words, the United States, in substance, contends that the statute does not mean what it says, but, in fact, means that the exclusive remedy provision relates only to a proprietor of a covered establishment who, in good faith, wishes to test the applicability of Title II to his enterprise.

This Court, then, is asked by the United States to either: rewrite the statute, a function which is exclusively within the powers of Congress; or to disregard it in situations deemed to be violent conspiracies, an alternative which is not judicial, but merely accommodating.

There is yet another reason, perhaps a stronger one, why the argument of the United States fails. Congress fully recognized and specified the evils which it denounced. In Section 203, without exception, it prohibited the deprivation and denial of Title II rights and privileges by *any person*, in good faith or in bad faith, with or without unlawful intent, and in the same breath prohibited any person from interfering with the exercise of the rights and privileges and from inflicting punishment as a result of the exercise of such rights and privileges. Thereafter, it provided civil sanctions only, for violations of this mandate and, by Section 207(b), made these sanctions exclusive. It cannot be realistically argued that Congress

did not intend the obvious result. Resistance to the public accommodations provisions, whether passive or active, violent or non-violent, is clearly to be dealt with within the framework of the Act and not under 18 U.S.C. 241.

Throughout its written argument, the United States has tacitly indicated a distinction between a criminal conspiracy and a violent conspiracy which is criminal. The insertion of the word "violent" in this argument adds nothing in support of the position, but is merely forensic. There is no requirement under either 18 U.S.C. 241 or 42 U.S.C. 2000a-2 (Title II, Section 203 of the Civil Rights Act), that conduct, in order to be unlawful, be violent. Likewise, there is woven into the argument of the United States a suggestion that a distinction should be made between a substantive violation and a conspiratorial violation of the statutory prohibitions. We will not make issue on the question of whether 18 U.S.C. 241 defines a substantive offense—this is immaterial for present purposes. The point is, there is no distinction in Section 207(b) between a substantive offense and a conspiracy. The exclusiveness of the civil remedy relates to all other remedies, save those excepted by the statute.

The two arguments of the United States referred to in the foregoing paragraph are on the collision course, and, as they must, ultimately collide in footnote 9, page 16, of the brief of the United States. We point this out, not by way of criticism, but to show the absence of logic in the position advanced by the United States. The argument falls by its own weight. The only way it can prevail is for Section 207(b) to be ignored or amended to insert exceptions which are not there.

We have hereinbefore answered the argument beginning on page 12 of the brief of the United States, but

now allude to it specifically. It is there argued that the word "exclusive", as used in Section 207(b), is immediately modified by the declaration that the exclusive-remedy clause does not preclude the assertion of "any right based on any other Federal or State law not inconsistent with this title" or prevent the pursuance of "any remedy, civil or criminal, which may be available for the vindication or enforcement of such rights." The quoted extracts are preceded by the words, "any individual or any State or local agency." Thus, as we have shown, the United States is precluded from asserting any other remedy to enforce the rights in question. If this were not so, the United States would have been included in the exception.

Finally, the United States argues at page 17 of its brief that unless it is permitted to utilize 18 U.S.C. 241, it is left without any effective means to protect its interest in the free access of its citizens to public accommodations. This argument may be valid, only time will tell, but it addresses itself to Congress and not to the Courts. In its wisdom, Congress has elected to withhold federal criminal sanctions, leaving available for the purpose of enforcement only those remedies reserved by Section 207(b). In passing, it is appropriate to note that such limitations were not imposed with reference to other rights accorded by the Civil Rights Act of 1964. This selectiveness makes the statutory scheme crystal clear.

## LEGISLATIVE HISTORY

The only references in the legislative history which have been called to our attention, having reference to prosecutions under 18 U.S.C. 241, are found in Senator Humphrey's statement quoted in footnote 12, at page 18 of the brief of the United States, and the testimony of the Attorney General before Sub-Committee No. 5 of the

Committee of the Judiciary, House of Representatives, Part II, pages 1411-13 (June 26, 1963). In his testimony with reference to an earlier version of the bill, prior to the amendment of November 1963, which added Section 207, the Attorney General testified that violations of Title II rights would be subject to prosecution under 18 U.S.C. 241.

With respect to Senator Humphrey's statement, it is to be noted that the Justice Department aided him in his preparation for discussion of Section 207(b). In the discussion, he stated that the exclusive remedy provision was "designed to make clear that a violation of sections 201 and 202 cannot result in criminal prosecution of the violator or in a judgment of money damages against him." We interrupt here to interpolate the observation previously made that the applicable prohibitions relate to all persons alike—proprietors and outsiders. If any exceptions to the statement were intended, this would have been the proper place to articulate them. Instead, the Senator continued to say that the exclusive remedy language was necessary to preclude the contention that violations of Title II rights would result in criminal prosecutions under 18 U.S.C. 241 or 242 or in civil liability under 42 U.S.C. 1983 or 1985. Thus, he stated,

> ". . . the first clause in section [207(b)] simply expresses the intention of Congress that the rights created by Title II may be enforced only as provided in Title II."

Following the above statements, the Senator gave an *example* of an innocent, good-faith proprietor who might violate the mandates of the law without fear of criminal prosecution or a suit for damages. It must be remembered that this was only an example and was not intended, in context, to cover all situations which might arise.

With reference to the testimony of the Attorney General, supra, it is noteworthy that subsequent to the receipt of his opinion that Title II rights were within the purview of 18 U.S.C. 241, as the proposed legislation was then written, the amendment of November 1963, that is, Section 207(b), was included in the Act and was, and is, carried as a part of the Civil Rights Act of 1964. The legislative reasoning and intent thus manifested is too clear to admit of argument.

All of the legislative history of the Act is in accord. Senator Young explained that the enforcement provisions of Title II are based upon the specific prohibition in Section 203 against denying *or interfering* with the right to nondiscriminatory use of facilities covered by the Title. He stated, "In case of a violation, the aggrieved person would be able to sue for an injunction to end the denial *or interference.*" (Emphasis supplied). 110 Cong. Rec. 7384. Senator Magnuson, 110 Cong. Rec. 7409, said:

> ". . . Title II gives no right to damages to the injured party nor does it provide any criminal penalties to those who violate its provisions. The most that can happen to one who violates the law laid down by Title II is that he will receive an order from the Court compelling him to comply with the law he had originally violated."

and again at 110 Cong. Rec. 7410, he fully explained:

> ". . . It is really a moderate title with enforcement limited to injunctive relief against discriminatory practices. . . ."

Senator Kuchel expressed a similar view, 110 Cong. Rec. 6557, observing that the sanctions of Section 207(b) are not as severe as the remedies afforded one aggrieved by similar conduct under the law of his State. Finally, as

reported in the opinion of the trial court, an express amendment to substitute direct criminal proceedings for the civil remedies provided by Title II was soundly defeated. 110 Cong. Rec. 13647.

All in all, the legislative history of the Act teaches nothing more than the plain, unambiguous language of the statute says, whether considered alone or in the context of the Act. It will be remembered that there was much opposition to the enactment of Title II in Congress, so it is not surprising that the end result is somewhat tempered and compromised. If the Act leaves something to be desired, it merely reflects the end result of the efforts, against substantial congressional and public opposition, to produce a public accommodations provision in the Civil Rights Act of 1964.

## CITATION OF AUTHORITIES

Because of the apposition of its text and in order to reduce what we think to be the applicable principles of law to basic summary, we have quoted in footnote, omitting annotations, 50 Am. Jur. 204, Statutes, §225.[1] We think this

1. "A statute is not open to construction as a matter of course. It is open to construction only where the language used in the statute is ambiguous, or will bear two or more constructions, or is of such doubtful or obscure meaning, that reasonable minds might be uncertain or disagree as to its meaning. Where the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation, and the Court has no right to look for or impose another meaning. In the case of such unambiguity, it is the established policy of the Courts to regard the statute as meaning what it says, and to avoid giving it any other construction than that which its words demand. The plain and obvious meaning of the language used is not only the safest guide to follow in construing it, but it has been presumed conclusively that the clear and explicit terms of a statute expresses the legislative intention, so that such plain and obvious provisions must control. A plain and unambiguous statute is to be applied, and not interpreted, since such a statute speaks for itself, and any attempt to make it clearer is a vain labor, and tends only to obscurity. . . ." 50 Am. Jur. 204, Statutes, §225.

reference most pertinent, particularly in view of the absence of any argument by the United States that the statute is ambiguous, contains conflicting provisions or is in any way obscure in its context. As we understand the basic argument of the United States, it merely asserts that the statute does not, of itself, provide adequate means for effecting the purposes of Title II.[2] If this be so, the remedy is not interpretation of the statute so as to afford a better method of enforcement, but is amendment of the statute.

It is evident from the congressional history of the Act, as recognized by this Court in *Atlanta Motel* v. *United States*, 379 U.S. 241, 248, "remedies are limited to civil actions for preventive relief." From an early date (1804), it has been recognized that a law is the best expositor of itself. *Pennington* v. *Coxe*, 6 U.S. 33. Thus, where the language of a statute is transparent and its meaning clear, there is no room for the office of construction, since there should be no construction where there is nothing to construe. *Lewis* v. *United States*, 92 U.S. 618; *Hudson Distributors, Inc.* v. *Eli Lilly & Co.*, 377 U.S. 386.

Defining crimes and fixing penalties are legislative, not judicial, functions. Even where Congress has exhibited clearly a purpose to proscribe conduct within its power to make criminal, but, because of its failure to clearly define the penalty which attaches, the Courts are without power to supply the deficit. *United States* v. *Evans*, 333 U.S. 483. While we insistently urge that neither

2. At pages 7, 9 and 19 of its brief, the United States submits that the creation of a civil remedy, in the absence of clear congressional intent that it should be an exclusive remedy, is not to be construed as precluding a corresponding criminal sanction and that Section 207(b) "does not in terms bar federal criminal prosecution". The complete answer to these contentions is that Congress, by making the provided civil remedy an exclusive one available to the United States, did express itself clearly on this question and did in terms bar federal criminal prosecution.

crime nor penalty are defined in Title II, proper construction of the Act as a whole demonstrates the intent of Congress to exercise only so much of its power to proscribe and penalize as it thought necessary or deemed advisable in the premises. Thus, under Title VI, Section 601, 42 U.S.C. 2000d, non-discrimination under federally financed projects was decreed, and under Title VII, Sections 703 and 704, 42 U.S.C. 2000e-2 and 2000e-3, certain employment practices were made unlawful, but in those Titles no limitations as to enforcement were made. Perhaps this explains the inclusion of Sections 1102 and 1103, Title XI, codified as 42 U.S.C. 2000h-1 and 2000h-3. This is all to say that the Act is itself discriminatory and demonstrates an intricate statutory scheme to proscribe, enforce and penalize various acts and conduct. In this overall scheme, Congress elected to enforce Title II rights only by civil proceedings.

To give Section 207(b) any meaning other than that urged here would have the effect of treating it as having no meaning, force and effect at all. A statute will not ordinarily be given a construction which makes it wholly redundant or renders it nugatory. *Crowell* v. *Benson*, 285 U.S. 22; *Singer* v. *United States*, 323 U.S. 338. The construction urged by the United States suggests that this result would not follow, as, in reality, it does have meaning as respects a proprietor who in good faith violates the Title II prohibitions, in that it protects him from prosecution under 18 U.S.C. 241. Good-faith violations of constitutional or statutory civil rights do not require such protection, since one may be prosecuted under 18 U.S.C. 241, only when he acts with a specific intent to interfere with such rights. *United States* v. *Guest*, 383 U.S. 745.

While we contend that the statute is consistent with the parallel intent and the apparent purpose, were this

not so, the result would not be altered. It is true that in some instances, in order to avoid an absurdity, hardship or injustice presumably not intended, a construction which carries the real intention may be justified. However, if the intention is clear, it is the duty of the Court to expound the statute as it reads. *Folsom* v. *United States*, 160 U.S. 121.

Again, we observe that the intention of the legislature must govern the interpretation of a statute. It is the legislature and not the Court, which is to define a crime and ordain its punishment. *Morgan* v. *Devine*, 237 U.S. 632. In the present case, Congress evinced its intent to prohibit the defined conduct without designating a violation of the prohibition a crime and without fixing criminal penalties. It was the clear intent of Congress that violations should be prosecuted by civil proceedings only. This intent has been given force and effect by the decision below. That judgment should be affirmed here.

## CONCLUSION

The judgment below, based upon a proper application of statutory construction, law and logic, is correct. It should be affirmed.

Respectfully submitted,

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December, 1967.

# SUPREME COURT OF THE UNITED STATES

No. 482.—October Term, 1967.

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| United States, Appellant, v. Horace Johnson et al. | On Appeal From the United States District Court for the Northern District of Georgia. |

[April 8, 1968.]

Mr. Justice Douglas delivered the opinion of the Court.

The question in this case is whether conspiracies by outside hoodlums to assault Negroes for exercising their right to equality in public accommodations under § 201 of the Civil Rights Act of 1964, 42 U. S. C. § 2000a, are subject only to a civil suit for an injunction as provided in § 204 of that Act, 42 U. S. C. § 2000a–3, or whether they are also subject to criminal prosecution under 18 U. S. C. § 241, which provides fine and imprisonment for a conspiracy "to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same. . . ."

The indictment charged a conspiracy to injure and intimidate three Negroes in the exercise of their right to patronize a restaurant. The defendants, who were outsiders, not connected with the restaurant, are charged with having used violence against these Negroes for having received service at the restaurant, the purpose of the conspiracy being in part "to discourage them and other Negro citizens from seeking service" there "on the same basis as white citizens."

The facts are not developed because the District Court granted a motion to dismiss the indictment on the ground

that § 207 (b) of the Act [1] makes the provision for relief by injunction the exclusive remedy under the Act. The case is here on appeal. 18 U. S. C. § 3731. We noted probable jurisdiction. 389 U. S. 910.

The legislative history contains language which to the District Court seemed to preclude remedy by indictment. Senator Humphrey, floor manager of the bill, explained § 207 (b):

> "This would mean for example, that a proprietor who, in the first instance, legitimately—but erroneously—believes his establishment is not covered by section 201 or section 202 need not fear a jail sentence or a damage action if his judgment as to coverage of Title II is wrong." 110 Cong. Rec. 9767.

Senator Young agreed:

> "The enforcement provisions of Title II are based on the specific prohibition in section 203 against denying or interfering with the right to the nondiscriminatory use of facilities covered by the title. In case of a violation, the aggrieved person would be able to sue for an injunction to end the denial or interference. . . . The prohibitions of Title II would be enforced only by civil suits for an injunction. Neither criminal penalties nor the recovery

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[1] Section 207 (b) of the Act, 42 U. S. C. § 2000a–6 (b), provides:

"The remedies provided in this title shall be the exclusive means of enforcing the rights based on this title, but nothing in this title shall preclude any individual or any State or local agency from asserting any right based on any other Federal or State law not inconsistent with this title, including any statutes or ordinance requiring nondiscrimination in public establishments or accommodations, or from pursuing any remedy, civil or criminal, which may be available for the vindication or enforcement of such right."

> of money damages would be involved." 110 Cong. Rec. 7384.

Senator Magnuson added:

> "Moreover, in every case, a judicial determination of coverage must be made prior to the entry of any order requiring the owner to stop discrimination. Thus, no one would become subject to any contempt sanctions—the only sanctions provided for in the act, until after it has been judicially determined that his establishment is subject to the act and he has been ordered by the Court to end this discrimination, and he has violated that Court order." 110 Cong. Rec. 7405.

That legislative history makes clear that the "proprietor" or "owner" is not to be subjected to criminal liability, where he has not had a chance to litigate whether his facilities are subject to the Act. But no proprietor or owner is here involved. Outside hoodlums are charged with the conspiracy; and the history of federal law, as applicable to them, is clear. 18 U. S. C. § 241 is derived from the Enforcement Act of 1870, 16 Stat. 141, and, as noted, protects the citizens "in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States." The right to service in a restaurant in such a "right," at least by virtue of the 1964 Act. We said in *United States* v. *Price*, 383 U. S. 787, 801, in reference to 18 U. S. C. § 241, "We think that history leaves no doubt that, if we are to give § 241 the scope that its origins dictate, we must accord it a sweep as broad as its language."

We have over the years given protection to many federal rights under § 241.[2] We refuse to believe that hood-

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[2] See, *e. g.*, *United States* v. *Classic*, 313 U. S. 299 (the right to vote); *United States* v. *Guest*, 383 U. S. 745 (right to travel);

lums operating in the fashion of the Ku Klux Klan, were given protection by the 1964 Act for violating those "rights" of the citizen that § 241 was designed to protect.

Immediately after the provision in § 207 (b) stating that the remedies provided "shall be the exclusive means of enforcing the rights based on the title," is a further provision stating that "nothing in this title shall preclude any individual or any State or local agency from asserting any right based on any other Federal or State law not inconsistent with this title . . . or from pursuing any remedy, civil or criminal, which may be available for the vindication or enforcement of such right." There is, therefore, within the four corners of § 207 (b) evidence that it was not designed as pre-empting every other mode of protecting a federal "right" or as granting immunity to those who had long been subject to the regime of § 241.

It is, of course, true that § 203 (b) of the Act, 42 U. S. C. § 2000a–2 (b) bars the use of violence against those who assert their rights under the Act, and that therefore a remedy by way of an injunction could be obtained by the party aggrieved under § 204 (a). A like remedy is available to the Attorney General by reason of § 206 (a). But as we read the Act, the exclusive-remedy provision of § 207 (b) was inserted *only to make clear that the substantive rights to public accommodation defined in § 201 and § 202 are to be enforced exclusively by injunction.* Proprietors and owners are not to be prosecuted criminally for mere refusal to serve Negroes. But the Act does not purport to deal with outsiders; nor can we

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*United States* v. *Waddell,* 112 U. S. 76 (the right to perfect a homestead); *Logan* v. *United States,* 144 U. S. 263 (the right to be free of violence while in the custody of a federal marshal); *United States* v. *Mason,* 213 U. S. 115 (the right of federal officers to perform their duties); *United States* v. *Price,* 383 U. S. 787 (Fourteenth Amendment rights).

imagine that Congress desired to give them a brand new immunity from prosecution under 18 U. S. C. § 241—a statute that encompasses "*all* of the rights and privileges secured to citizens by *all* of the Constitution and *all* of the laws of the United States." *United States* v. *Price, supra,* at 800.

*Reversed.*

MR. JUSTICE MARSHALL took no part in the consideration or decision of this case.

# SUPREME COURT OF THE UNITED STATES

No. 482.—October Term, 1967.

United States, Appellant, v. Horace Johnson et al. | On Appeal From the United States District Court for the Northern District of Georgia.

[April 8, 1968.]

Mr. Justice Stewart, with whom Mr. Justice Black and Mr. Justice Harlan join, dissenting.

I regret that I cannot join the opinion of the Court. There is, of course, no question of the reprehensibility of the appellees' alleged conduct. But the issue is whether Congress has subjected this conduct to federal criminal prosecution.

Section 201 of Title II of the Civil Rights Act of 1964, 78 Stat. 243, secures the right to equal enjoyment of places of public accommodation. Section 203 prohibits interference with that right in any of three ways:

> "No person shall (a) withhold, deny, or attempt to withhold or deny, or deprive or attempt to deprive, any person of any right or privilege secured by section 201 or 202, or (b) intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person with the purpose of interfering with any right or privilege secured by section 201 or 202, or (c) punish or attempt to punish any person for exercising or attempting to exercise any right or privilege secured by section 201 or 202."

Section 204 authorizes private injunctive actions against violations of § 203. Section 206 provides for injunctive actions by the Attorney General against pat-

terns or practices of resistance to enjoyment of Title II rights. Finally § 207 states:

> "The remedies provided in this title shall be the exclusive means of enforcing the rights based on this title . . . ."[1]

The plain language of the exclusive remedies clause of § 207 thus clearly precludes a criminal prosecution for interfering with rights secured by Title II.[2] And the very legislative history cited by the Court leaves no doubt that a specific purpose of that clause was to prevent criminal prosecutions under 18 U. S. C. § 241. It was upon that understanding that Congress enacted the legislation.

The Court's effort to distinguish between refusal of service by a proprietor and violent interference by third parties is not only without any support in the language of § 207 but also is belied by § 203 of the Title, quoted above. That section clearly prohibits intimidation and coercion by third persons as well as refusal of service by a proprietor. Congress, therefore, was explicitly aware of the kind of conduct alleged in this case when it enacted Title II, and Congress provided in § 207 that the exclusive remedy to prohibit such conduct must be by injunction.

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[1] Section 207 contains a proviso; but the United States, which brought this prosecution, is conspicuously absent from the list of those to whom the proviso applies:

"[N]othing in this title shall preclude *any individual or any State or local agency* from asserting any right based on any other Federal or State law not inconsistent with this title, including any statute or ordinance requiring nondiscrimination in public establishments or accommodations, or from pursuing any remedy, civil or criminal, which may be available for the vindication or enforcement of such right." (Emphasis added.)

[2] The indictment did not allege injury to any rights other than those established by Title II of the Civil Rights Act of 1964.

The exclusive remedies provided by Congress to protect the rights secured by Title II of the 1964 Act are undoubtedly ineffective in a case like this. But I cannot, for that reason, join in rewriting the law that Congress so clearly enacted.

I respectfully dissent.